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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,040	12/09/2004	Scott Manzo	2842	3590
7590 Covidien 60 Middletown Avenue North Haven, CT 06473	02/06/2009		EXAMINER MENDOZA, MICHAEL G	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 02/06/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/518,040	MANZO, SCOTT	
	<b>Examiner</b>	<b>Art Unit</b>	
	MICHAEL G. MENDOZA	3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 November 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-38 is/are pending in the application.

4a) Of the above claim(s) 1-25 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 26-38 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments filed 11-30-2008 have been fully considered but they are not persuasive. The applicant argues that a "locking tab extending tangentially" from a side edge is not taught by DeBue. The examiner disagrees. As shown in fig. 1 locking tabs 38 extends away from (tangentially) annular body 20 as they are part of locking section 22 which also extends away from annular body 20.
2. The applicant also argues that DeBue fails to disclose "the at least one locking tab inhibits the annular body from returning to the first diameter when a radially inward oriented constriction force about an outer surface of the annular body portion." The examiner disagrees. The outward force of the annular body returning to its original less stressed configuration along with any frictional forces of the locking tabs 38 against their corresponding openings would inhibit the annular body from returning to the first diameter.
3. In regards to the addition of "for joining body vessels", the recitation "for joining body vessels" is functional language. In response to applicant's argument that the device is for joining body vessels, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

***Claim Rejections - 35 USC § 102***

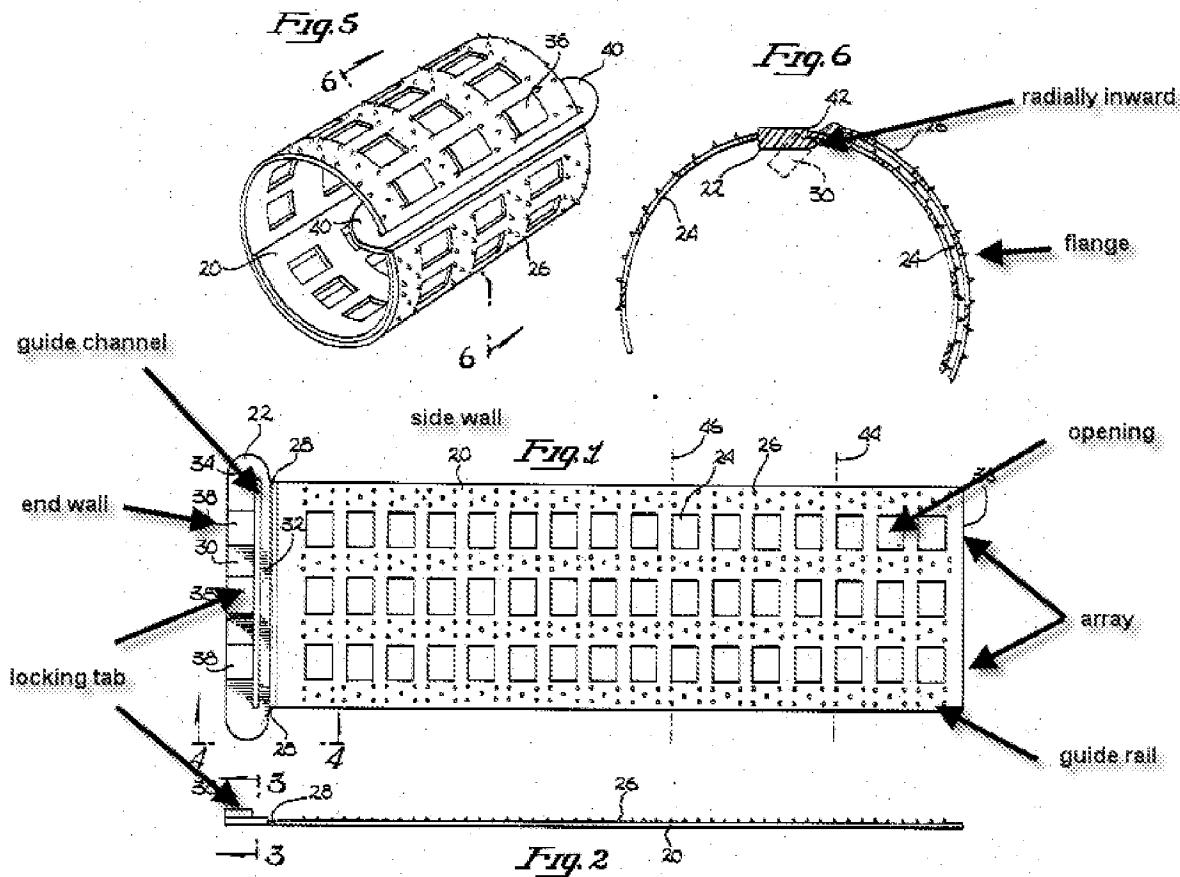
4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 26-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Debeu 3683940.

6. Debeu teaches a radially expanding joining member, comprising: an annular body portion defining a longitudinal axis including distal and proximal terminal edges, first and second side terminal edges; at least one annular array of openings formed in the annular body; and at least one locking tab extending tangentially from the first side terminal edge, each locking tab being in registration with a respective array of openings and receivable in the openings. wherein the joining member has a first position and a second position, wherein the at least one locking tab inhibits the annular body from returning to the first diameter by being received in an opening of the at least one array of openings; two annular arrays and two tabs extending tangentially from the first side edge; guide rails formed, one each, along each side of the two annular arrays of openings; a guide channel formed near the second side terminal edge; wherein the guide channel is defined by a pair of side walls extending radially inwardly from the distal end proximal terminal edges; wherein the guide channel is further defined by an end wall interconnecting the terminal ends of the pair of side walls; and a plurality of flanges extending radially outward.



7. Claims 26-28 and 33-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Ryan et al. 5984963.
8. Ryan et al. teaches a radially expandable joining member, comprising: an annular body portion defining a longitudinal axis including distal and proximal terminal edges, first and second side terminal edges; at least one annular array of openings formed in the annular body; and at least one locking tab extending tangentially and radially from the first side terminal edge (col. 8, lines 41-44), each locking tab being in registration with a respective array of openings and receivable in the openings; wherein

the joining member has a first position and a second position (figs 13 & 14), wherein the at least one locking tab inhibits the annular body from returning to the first diameter by being received in an opening of the at least one array of openings (col. 11, lines 37-51); wherein each of the openings of that at least one annular array of opening is defined by an angled wall such that an upper edge of the angled wall is closer to the second side terminal edge than a lower edge of the angled wall (see openings of fig. 24); a pair of guide rails formed on an inner surface of the annular body (defined by outer edge and openings); and wherein the joining member is fabricated from a bio-absorbable material (see abstract).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ryan et al. in view of Khosravi et al. 6048360.

11. Ryan et al. teaches the joining member according to claim 33. It should be noted that Ryan et al. fails to teach wherein the joining member is fabricated from a shape member alloy. Ryan et al. teaches the use of a resilient polymer.

12. Khosravi et al. teaches of a polymer or an alloy that have shape memory characteristics (col. 6, lines 34-46). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device

or Ryan et al. use an alloy in view of Khosravi et al. since an alloy is an obvious alternative to a polymer sharing the same characteristics.

13. Ryan/Khosravi teaches the joining member according to claim 33, wherein the joining member includes a plurality of projection along an outer surface of the annular body portion (col. 10, lines 46-54).

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. G. M./  
Examiner, Art Unit 3734

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3734